

INDUSTRY CANADA



TELUS COMMUNICATIONS COMPANY

COMMENTS

Responding to the proposed Order of the Governor in Council, published in Part 1 of the Canada Gazette 16 December 2006, that would vary *Forbearance from the regulation of retail local exchange services*, Telecom Decision CRTC 2006 – 15

16 January 2007

1.0 Introduction

1. On December 11, 2006 the Honourable Maxime Bernier, Minister of Industry, announced a government proposal to vary *Forbearance from the regulation of retail local exchanges services*, Telecom Decision CRTC 2006 – 15 (“the Local Forbearance Decision”). On December 16, 2006, the proposed Order varying the Local Forbearance Decision (“the proposed Order”) was published in Part 1 of the Canada Gazette.¹ In the Regulatory Impact Analysis Statement to which the proposed Order was annexed, interested persons were invited to make representations regarding the proposed Order within 30 days after its date of publication.
2. These represent the Comments of TELUS Communications Company (“TELUS”) in response to the proposed Order.

2.0 The framework established in the proposed Order

3. The framework established in the proposed Order creates a brightline test for determining under what circumstances the local exchange services provided by incumbent telephone companies shall be relieved of the price regulations established by the Canadian Radio-television and Telecommunications Commission (“CRTC”).
4. TELUS welcomes Governor in Council’s proposed Order because TELUS has long advocated for just such an approach. The proposed brightline tests greatly enhance the certainty around under what circumstances and when forbearance will be granted by the CRTC. TELUS has also long advocated for simplicity and clarity in any proposed brightline test and TELUS submits that the proposal announced by Minister Bernier goes a considerable way towards achieving that objective.

¹ Canada Gazette, Part 1 at page 4312.

5. The proposed Order would require the CRTC to forbear from regulating the residential local exchange services of the incumbent telephone company (“ILEC”) where the ILEC demonstrates that there are, including the ILEC, at least three facilities-based telecommunications services providers, including providers of mobile wireless services, each of which is separately owned and not an affiliate of any of the others, each of which offers residential local exchange services throughout a market, and at least one of which is, in addition to the ILEC, a wireline service provider.
6. The proposed Order would also vary the Local Forbearance Decision by changing the relevant geographic area for which forbearance, for both residential and business services, would be granted by permitting the ILECs to apply for forbearance based on either the geographic area delineated by its local interconnection regions, or based on the area encompassed by its local exchange boundaries.
7. For business local exchange services, the proposed Order would require the ILEC to demonstrate that there are, including the ILEC, at least two facilities-based wireline providers of business services, each of which is separately owned and not an affiliate of any of the others and each of which offers business local exchange services throughout a market.
8. However, prior to the CRTC granting forbearance under these conditions in either a residential or business market, the ILEC must also demonstrate that during the six-month period preceding its application, it met, on average, nine Competitor Quality of Service (“CQoS”) indicators with respect to the services provided to competitors in its territory, and that it did not consistently provide substandard services to any of those competitors.
9. The criteria outlined above would supplant the framework established in the Local Forbearance Decision and would constitute an administratively streamlined mechanical test for determining under what circumstances local forbearance must be granted by the CRTC.

3.0 TELUS' response to the proposed Order

10. As noted above, TELUS welcomes Minister Bernier's proposal. TELUS submits that the proposed Order represents an efficient approach to granting forbearance to ILECs in geographic areas where they face competition from competing providers of local exchange services. Moreover, TELUS submits that the proposed Order will significantly increase consumer welfare by relying on competition and market forces to deliver the benefits of open competition to consumers as opposed to regulation. TELUS notes that consumers themselves seem to agree as an IPSOS Reid survey² released on December 15, 2006 demonstrates.
11. Notably, the IPSOS Reid survey of 1000 randomly selected Canadian adults concluded that 75% of Canadians believe that the new regulatory framework will produce more competition in local telephone services that will benefit consumers. TELUS agrees. Consumers will benefit when competing providers of any service are permitted to respond to their needs and to competing offers.
12. TELUS submits that the proposed Order is consistent with the recommendations of the Telecom Policy Review Panel, in that the proposed Order establishes a framework that would rely on market forces to the maximum extent possible. In TELUS' view, the operation of unfettered market forces will provide considerable consumer benefits and support the Government's objective of ensuring an internationally competitive and robust telecommunications industry here in Canada.
13. TELUS also submits, however, that there are a number of minor amendments that could be made to the framework outlined in the proposed Order that would provide greater clarity and enhance certainty about how the tests would be applied and interpreted by the CRTC.

² IPSOS Reid Survey, "Canadians Embrace New Local Telephone Policy", December 15, 2006.

4.0 TELUS proposes consequential amendments and clarifications

14. The English text of the proposed Order requires for both residential and business services that a number of providers other than the ILEC *offer* services throughout the relevant geographic area. As noted above, the relevant geographic area can be either the local interconnection region or the local exchange. (emphasis added)
15. However, the French text of the proposed Order requires that a number of competing providers “*peuvent fournir*” (*can offer*) services throughout the relevant geographic area. (emphasis added)
16. There is a substantive difference between the English and French texts that needs to be clarified. In TELUS’ view, the effect of the French text is consistent with the intention of the proposed Order, that is to facilitate a greater reliance on market forces where the reality of a number of competing providers is present in the relevant area. If an ILEC is required to demonstrate that competitors offer services throughout an exchange or local interconnection region, the practical effect will be that forbearance will likely rarely be granted.
17. The reason for this is that the relevant geographic areas permitted by the proposed order are completely related to ILEC network topology. That topology does not rely on municipal boundaries or other administrative boundaries and thus, the exchange boundaries are drawn exclusively to reflect ILEC networks. For example, in Edmonton, Alberta the local cable company likely does not service some minor pockets of the Edmonton exchanges, but nevertheless serves or can serve the vast majority of consumers in those exchanges. The same would almost certainly be true of competing mobile wireless providers whose network footprints are unrelated to wireline exchanges or local interconnection regions.
18. Cable companies and mobile wireless providers can offer and do offer services in all urban exchanges and forbearance should not be withheld by virtue of them not offering services to a handful of locations, mostly unpopulated, within the ILEC local exchange or local interconnection region.

19. In TELUS' view, the proposed Order could be clarified by simply amending the test to require that an ILEC demonstrate that the competing providers **can offer** services in the exchange (emphasis added). Reference to local interconnection regions is unnecessary because those regions are made up of a collection of exchanges, all of which would have to be listed at the time of forbearance for administrative purposes in any event. When a cable company or other competitive local exchange carrier launches service in an exchange and a competing mobile wireless provider offers services in an exchange, that exchange should be forborne forthwith.
20. In this way, all facilities-based competitors whether or not they make use of any ILEC facilities will be captured in the competitive presence tests for both residential and business services. This too is consistent with the facilities-based model developed by the CRTC in *Local Competition*, Telecom Decision CRTC 1997-8. Facilities-based entrants have varying quantities and types of their own facilities and varying requirements for the facilities of ILECs. All Canadian carriers are, however, competing facilities-based providers and should be taken into account when applying the brightline tests.
21. Another clarification that would assist in the streamlined implementation of the new framework involves the requirement that an ILEC has met its CQoS benchmarks, on average, for six months prior to applying for forbearance in a particular exchange or local interconnection region. TELUS does not believe that it is necessary to delay the filing of a forbearance application until this pre-condition is met. In TELUS' view, once the proposed Order comes into effect, an ILEC should be permitted to demonstrate the presence of competitors in an exchange or grouping of exchanges at the earliest opportunity. Having done that, the final step in obtaining forbearance would involve the ILEC filing an attestation with respect to its CQoS compliance.

22. In this way, all exchanges where the competitive presence criteria have been demonstrated will qualify for forbearance forthwith upon meeting the CQoS criteria.
23. As noted above, the tests outlined in the proposed Order are objective and mechanical. They are administratively simple to demonstrate and apply. Accordingly, TELUS submits that it is unnecessary to provide the CRTC with 120 days within which to grant forbearance where all of the conditions have been met. In TELUS' view, 60 days is more than ample time for the CRTC to issue its determination. Because the tests are brightline tests, there is little for the CRTC to consider or determine. The ILEC will have been able to demonstrate that the required level of competitive presence has been met and that the pre-conditions to forbearance have been achieved. TELUS notes that the 60day timeframe is consistent with the timeframe implemented for cable rate de-regulation in 1997.³
24. TELUS also submits that the requirement that an ILEC demonstrate that it did not consistently provide substandard services to any competitor needs to be amended or clarified because, as the condition is constituted in the proposed Order, there is too much subjectivity and discretion left to be certain how it might be applied. In TELUS' view, forbearance should not be withheld ***unless it is demonstrated that the ILEC in question has engaged in a practice of providing substandard service to any competitor with the intent of impairing unduly the establishment or continuance of a competitive market.*** (emphasis added)
25. Lastly, TELUS submits that the tests and conditions set out in the proposed Order will not be exhaustive. In other words, the effect of the order, as with the Commission's original order, will be that forbearance will be granted when the conditions are satisfied but the order cannot prohibit forbearance from being granted in other factual circumstances that might satisfy the Commission that the preconditions for forbearance set out in subsections 34(1) or 34(2) plus subsection

³ *Filing guidelines respecting proposed rate deregulation and rate increases, pending such deregulation, for rate-regulated Class 1 cable distribution undertakings*, Broadcasting Circular 427, 22 December 1997.

34(3) of the Telecommunications Act (“the Act”) have been met. In TELUS’ view, there are likely to be circumstances where either the brightline tests set out in the proposed Order have not been fully met or the pre-conditions to forbearance have not been demonstrated but where forbearance may be nevertheless justified. It should be clarified that an ILEC is not precluded from applying for, and the Commission is not precluded from granting forbearance based on other evidence that the requirements of section 34 of the Act have been met.

26. In that regard, TELUS notes that it filed an application seeking forbearance from regulation of its residential local exchange services in Fort McMurray, Alberta on October 19, 2006. Despite losing a significant amount of market share, in excess of the 25% required by the CRTC’s Local Forbearance Decision, the pre-conditions in the proposed Order related to CQoS will delay forbearance and the consumer benefits that would flow to the residents of Fort McMurray. TELUS meets its quality of service requirements in the Fort McMurray exchange and the unique circumstances associated with Fort McMurray justify forbearance because the requirements of section 34 of the *Act* have been amply demonstrated.

5.0 CONCLUSION

27. TELUS encourages the Governor in Council to move with haste in implementing the proposed Order including the minor amendments suggested above and reiterated below. The certainty of the proposed Order, as well as its administrative simplicity will provide consumers with the benefits that flow from a greater reliance on open competition rather than the current emphasis on continued regulation.
28. In TELUS’ view the intent of proposed Order can be best achieved by implementing the following consequential amendments:

- align the English and French texts so as to clarify that an ILEC must demonstrate that the necessary competitors offering local exchange services in the exchange **can offer** them throughout the exchange;
- permit ILECs to file forbearance applications demonstrating that the competitive presence tests have been met in advance of meeting the CQoS benchmarks, on average, across their operating territories;
- having received a forbearance application from an ILEC, the CRTC should be required to grant the application forthwith, but no later than 60 days after the ILEC has demonstrated its compliance with the CQoS condition;
- forbearance should not be withheld *unless it is demonstrated that the ILEC in question has engaged in a practice of providing substandard service to any competitor with the intent of impairing unduly the establishment or continuance of a competitive market.*
- clarify that ILECs can seek and the CRTC can grant forbearance, on other grounds than those outlined in the proposed Order.

ALL OF WHICH IS RESPECTIVELY SUBMITTED.

****End of Document****